

FILED
JAMES L. GLENN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2005 FEB 22 PM 1:46

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
)
V.)
)
SAMUEL A ASHLEY JR.)
)
Defendant.)
)

Case No. 1:04 CV 689
Criminal No. 1:02-CR-22

Chief Judge Beckwith

DEFENDANT'S REPLY TO THE GOVERNMENT'S
RESPONSE TO MOTION CONCERNING PERSONAL PROPERTY

Now, comes the defendant, Sam Ashley, pro se, who respectfully submits his response to the government's reply to the motion concerning personal property.

FACTS

Somewhere between September 10, 2001 and March 1st of 2002, the government conducted an illegal search of the defendant's home. They had no warrant, nor did they have permission from the defendant to enter and search the house and outside buildings. During this search, federal agents removed personal property from the house. They also took other items from the defendant's place of business.

The defendant pleaded guilty to two counts of mail fraud and one count of income tax evasion. The government asked that a computer and a bank account with \$30,000 in it be forfeited as part of a so-called plea agreement. They could have asked to keep the other items, and they did not.

Shortly after the defendant received 135 months for his crimes,

(2)

the defendant filed a motion asking the court to order the government to return all personal property to the defendant.

That motion went unchallenged by the government, untill almost a year later when the defendant found out that the motion was approved and the court ordered the FBI to turn over the defendant's property to his counsel of record.

Now, almost two years later they want to "suddenly object" to the motion and the court's order. Now they want to ask this court to modify a previous order that is 20 months old.

The government is out of time by their failure to timely raise res judicata or collateral estoppel as waiver. The general rule is that the failure to plead or raise in a timely manner matters calling for the application of the doctrines of res judicata and estoppel is regarded as a waiver. See, **United States V. Shanbaum** 10 F.3d 305.

Where res judicata has been waived by a party who choses not to raise the defense, it may not be invoked by a third party who waived it.

See, **Shanbaum** at 305, One motivating principle behind claim preclusion is waiver, if party does not raise claim or defense in prior action, that party thereby waives its right to raise that claim or defense in subsequent action.

Simply put, the government was ordered to return the property, over 20 months ago. Only after being caught breaking the law, (contempt of court) and refusing to follow the court's direct order and return the property. Now they want to raise a variety of reasons why they did not return the property, and they insist on filing an out of time motion to object to the motion and to the order.

(3)

The order has become final, as it was unchallenged by the government. The government has forfeited all claims on this order as they are out of time.

They claim that since the defendant is exercising his constitutional rights to appeal, that they now need to hold on to the defendant's property in case the defendant gets to go to trial. Nonsense, where do they get this stuff? The defendant is only attacking his illegal sentence, not the plea itself, so there will never be a trial in this case. Nice try though!

If, for some reason, the government would need to prove that Ashley carried a false ID around in his wallet, then there are numerous other official records that would prove the same thing. Ashley has not been charged with "wallet fraud", so there is no reason to continue to deprive Ashley of his wallet .

They claim they want to keep the defendant's wedding video, so they can prove that he got married under an alias name. The marriage certificate would be the proper thing to use, not just a video that could have been made anywhere.

They took this property about three years ago, and they now claim that they are in the process of making a list of all of the items that they took, that is just plain insane. Proper procedure with the FBI and other federal agents is that each item took is recorded on paper, as to the time, date, place of each item. They should have had this list three years ago.

They are trying once again to trick the defendant with words:

"The United States therefore suggests that this Court hold Ashley's motion for consideration after the termination of the \$2255 motion litigation and modify Judge D'Lott's previous order on the above grounds and to include only property that does not contain evidence of Ashley's fraudulent aliases."

(4)

What they are really saying is that, every single item that they took, was purchased by Ashley using an alias. So the TV that the defendant bought under his Steve Adkins name, would allow them to keep it. They just want to deprive the defendant of his property. It is that plain and simple.

If the motion were to be modified, it should state that Ashley is allowed to receive all of his personal property that was taken at his home and his office, that was not directly related to an illegal act. All they are trying to do is trick the defendant and the court, into thinking that somehow they have the best interests of the public in mind.

Once this list is completed, then Ashley will be more specific as to what he wants back. However, he is not agreeing to change or modify anything at this point.

For all the reasons stated above, the defendant respectfully requests that this Honorable Strike the government's motion asking for a modified order, as untimely filed. That after this list of property (All property that was taken from his home at 3359 Old State Rd. MT. Orab, Ohio and all of the outer buildings on the same property, and every single item that was taken at 1400 State St. Cincinnati, OH. Let's see what they took and then they can scream wolf if they want to.

RESPECTFULLY SUBMITTED

Sam Ashley

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I do hereby certify that a copy of this motion has been sent to Asst. US attorney Coombe at 221 E. Fourth St. room 400, on the 18th day of Feb 2005

Sam Ashley